

**BEFORE THE NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION**

RONALD R. BURKHARDT,	)	
	)	
Appellant,	)	CASE NO. 04A-116
	)	
vs.	)	
	)	FINDINGS AND FINAL ORDER
HOWARD COUNTY BOARD OF	)	DISMISSING APPEAL AT THE CLOSE
EQUALIZATION,	)	OF THE TAXPAYER'S CASE
	)	
Appellee.	)	

**SUMMARY OF DECISION**

Ronald R. Burkhardt ("the Taxpayer") protested the 2004 proposed value for the Taxpayer's agricultural real property as determined by the Howard County Assessor ("the Assessor"). (E1). The Howard County Board of Equalization ("the Board") denied the protest and the Taxpayer appealed. The Board moved to dismiss the Taxpayer's appeal at the close of the Taxpayer's case-in-chief for failure to prove a *prima facie* case.

**I.  
ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's valuation and equalization protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value was unreasonable.

**II.**  
**STATEMENT OF THE CASE**

The Taxpayer owns a 160-acre tract of land legally described as the SW $\frac{1}{4}$  of Section 28, Township 15, Range 9, in Howard County, Nebraska. (E13:1). There are no improvements on this tract of land. (E13:2).

The Assessor determined that 80% of the subject property's actual or fair market value was \$75,930 as of the January 1, 2004, assessment date. (E1; E13:2). The Taxpayer timely protested that determination and requested an equalized value of \$58,540. (E1). The Board denied the protest. (E1).

The Taxpayer appealed the Board's decision on August 25, 2004. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission issued an Order for Hearing and Notice of Hearing and a copy of each document was served on each of the Parties. The Commission called the case for a hearing on the merits of the appeal in the City of Kearney, Buffalo County, Nebraska, on August 16, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Karin L. Noakes, Esq., the Howard County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Wickersham served as the presiding officer.

The Board moved to dismiss the Taxpayer's appeal at the close of his case-in-chief for failure to adduce any evidence

that the Board's decision was incorrect and either unreasonable or arbitrary.

### **III. APPLICABLE LAW**

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decision was incorrect and (2) that the Board's decision was either unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9). The "unreasonable or arbitrary" element requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) failed to act upon sufficient competent evidence in making its decision. The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's value was unreasonable. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

### **IV. FINDINGS OF FACT**

The Commission finds and determines that:

1. The Taxpayer's evidence of actual or fair market value is limited to opinion testimony and an "Income Approach."

2. The Taxpayer's only evidence of the actual or fair market value of his "comparables" is evidence of sales of parcels located in the same market area as the subject property unadjusted for time. The Taxpayer admitted that these parcels are valued by the Board using the same methodology as that used to value the subject property.

**V.  
ANALYSIS**

The Taxpayer alleged in his protest that the subject property is overvalued and that the agricultural market areas within Howard County were improperly redrawn in 2004 to include the subject property in the 7100 Market Area. (E13:1; E11:2).

**A.  
VALUATION**

Agricultural land is to be valued at 80% of actual or fair market value. Neb. Rev. Stat. §77-201(2) (Cum. Supp. 2004). The Taxpayer purchased this tract of land in 2000 for \$63,000. The Taxpayer testified that farm ground has been appreciating in value since 1993. The Taxpayer testified that in his opinion the subject property's actual or fair market value was approximately \$500 per acre as of the January 1, 2004, assessment date. The Board's determination of value at 100% of actual or fair market

value is approximately \$593 per acre. ( $\$75,930 \div 80\% = \$94,912.50 \div 160 \text{ acres} = \$593 \text{ per acre}$ ).

The Taxpayer offered an Income Approach in support of his opinion of value. (E9). The Taxpayer's Income Approach is based on estimated income, estimated expenses and a capitalization rate which the Taxpayer derived. The Taxpayer's support for these factors is limited to his opinion testimony and the Income Approach used by the Taxpayer does not support his opinion of actual or fair market value of \$80,000. Further the Taxpayer acknowledged that the agricultural market in Howard County as of the assessment date does not reflect values derived from the Income Approach.

The Taxpayer's opinion of value, \$80,000, is based on opinion evidence. An owner who is familiar with his property and knows its worth is permitted to testify as to its value. *US Ecology v. Boyd County Bd. Of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999). Opinion testimony standing alone, however, does not overcome the statutory presumption in favor of the Board. *Garvey Elevator, supra*.

The Taxpayer also alleges that the increase in the subject property's 2004 assessed value over the 2003 assessed value is unwarranted. The market value of real property usually changes from year to year. Changes made to the property since the last assessment will usually affect market value. Occasionally, the

prior assessed value may be shown to be incorrect. The prior year's assessed value is therefore not relevant evidence of actual or fair market value in a subsequent year. *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944). *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988). If the base for calculation of a percentage change is not relevant evidence then any calculation based on it cannot be relevant evidence. The percentage change in assessed value from year to year is therefore not relevant evidence that the current assessed value is incorrect and either unreasonable or arbitrary.

The Taxpayer adduced evidence concerning the sale of three properties located within Market Area 7100. (E6; E7; E8). The subject property's actual or fair market value may be established using sales of "comparable" properties. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998). This methodology, however, requires a taxpayer to demonstrate by clear and convincing evidence that the properties offered as "comparables" are truly comparable. *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998); *Westgate Recreation Ass'n v. Papio-Missouri River Natural Resources Dist.*, 250 Neb. 10, 17, 547 N.W.2d 484, 492 (1996). The properties described by the Taxpayer differ from the subject property and the Taxpayer

adduced no evidence of the adjustments necessary to account for those differences. Later the Taxpayer testified that these properties were not truly comparable to the subject property. The Taxpayer testified that he did not look outside Market Area 7100 for sales of comparable properties because he believed sales from outside his market area would not be deemed comparable. While location may be a factor in determining comparability it is not the exclusive factor to be considered. "Comparable properties" share similar quality, architectural attractiveness (style), age, size, amenities, functional utility, and physical condition. *Property Assessment Valuation*, 2<sup>nd</sup> Ed., International Association of Assessing Officers, 1996, p. 98. When using "comparables" to determine value, similarities and differences between the subject property and the comparables must be recognized. *Id.* at 103. "Financing terms, market conditions, location, and physical characteristics are items that must be considered when making adjustments . . . ." *Id.* at 98. Without proof of the amount and character of necessary adjustments the price paid for a property typically cannot be considered proof of the value of the subject property.

**B.**  
**EQUALIZATION**

The Taxpayer requested an equalized value of \$58,540. (E1). This value is based on application of the Market Area 7300 values

to the Land Classification Groups of the subject property. (E3:2). The purpose of equalization of assessments is to bring assessments from different parts of the taxing district to the same relative standard, so that no one part is compelled to pay a disproportionate share of the tax. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief. However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive." *Cabela's Inc. v. Cheyenne County Bd. of Equalization*, 8 Neb.App. 582, 597, 597 N.W.2d 623, 635 (1999). The Taxpayer must demonstrate that the discrepancy was not the result of an error of judgment but was a deliberate and intentional discrimination systematically applied." *Kearney Convention Center v. Buffalo County Board of Equalization*, 216 Neb. 292, 304, 344 N.W.2d 620, 626 (1984).

The Taxpayer adduced no evidence of the actual or fair market value of "comparable" properties from other Agricultural Market Values within Howard County. The per acre assessed values for those other agricultural market areas are shown in Exhibit 11. In the absence of "comparable" properties from those other Agricultural Market Areas there is no evidence of a lack of



equalization of agricultural assessed values across the agricultural market areas lines.

**C.  
CONCLUSION**

The Board moved to dismiss the Taxpayer's appeal at the close of the Taxpayer's case-in-chief. The Board, based upon the applicable law, need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was [incorrect and either] unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998); Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004). The Board's Motion must accordingly be granted and the Taxpayer's appeal must be dismissed.

**VI.  
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Parties and over the subject matter of this appeal.
2. The Commission is required to affirm the decision of the Board unless evidence is adduced establishing that the Board's action was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).

3. The Board is presumed to have faithfully performed its official duties. The Board is also presumed to have acted upon sufficient competent evidence to justify its decisions. These presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished the reasonableness of the Board's value becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests on the Taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).
4. "Actual value" is defined as the market value of real property in the ordinary course of trade, or the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm's-length transaction, between a willing buyer and willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. Neb. Rev. Stat. §77-112 (Reissue 2003).
5. The Taxpayer has failed to adduce any evidence that the Board's decision was incorrect and either unreasonable or arbitrary.

**VII.  
ORDER**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:**

1. The Howard County Board of Equalization's Motion to Dismiss is granted.
2. The Taxpayer's real property legally described as the SW<sup>1</sup>/<sub>4</sub> of Section 28, Township 15, Range 9, Howard County, Nebraska, shall be valued as follows for tax year 2004, as determined by the Board:

Land	\$75,930
Improvements	\$ -0-
Total	\$75,930
3. Any request for relief by any Party not specifically granted by this Order is denied.
4. This decision, if no appeal is filed, shall be certified to the Howard County Treasurer, and the Howard County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
5. This decision shall only be applicable to tax year 2004.

6. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Lore made and entered the above and foregoing Findings and Orders in this appeal on the 16<sup>th</sup> day of August, 2005. Commission Hans dissented and would have granted the Taxpayer the relief requested. The Findings and Order were, however, approved and confirmed by Reynolds and Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §7).

Signed and sealed this 17<sup>th</sup> day of August, 2005.

**SEAL**

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*Wm. R. Wickersham, Chair*

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE APPEAL MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW IN NEBRASKA REVISED STATUTE §77-5019 (REISSUE 2003, AS AMENDED BY 2005 NEB. LAWS, L.B. 15, §11). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.